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No. 96-1110

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

JACQUELINE SCHROERING - - *Petitioner*

versus

THE COURIER-JOURNAL and
LOUISVILLE TIMES COMPANY - *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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5 pp

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This is the Petitioner's Reply to the Brief in Opposition to her Petition for a Writ of Certiorari.

As is not unusual for wrongdoers, the Respondent newspaper wants to have its cake and eat it too. Thus it seeks to persuade this Court that all of the statements of which the Petitioner complains are impossible to prove, and therefore must be categorized as opinion.

It was not so circumspect in the Courts below. Indeed, before it discovered which way the prevailing judicial wind was coming from, it freely admitted that the editorials at issue in this case, although presented to the reader in the form of opinion, were:

> . . . based on *facts* that were both disclosed to the reader in the editorial and were accessible and well-known to the community at the time. The newspaper informs its audience that it based its endorsement decision on interviews with lawyers, who complained of "disturbing displays of emotionalism" in Plaintiff's courtroom and [that] "her legal acumen and ability to articulate her legal reasoning [were lacking]."

(Transcript of Record of the Jefferson Circuit Court, Pp. 28-29, from Defendant's Motion to dismiss).

These purported facts are not difficult to identify. They may be found at pages 6-8 of the Brief in Opposition and at pages 3-6 of the Petition for Certiorari.

As to the newspaper's statement that, "Male and female lawyers complain of disturbing displays of emotionalism in here courtroom," the following facts, if such they be, were available to the editorial writer although, of course, they were never disclosed to the newspaper's readers:

1. Source #1's statement complaining of Judge Schroering's "mannerisms on the bench," and her "mak[ing] faces."

2. Source #8's statement that Judge Schroering became angry and yelled at an attorney, actions that the source opined were not "judicious," and "even keeled."

3. Source #10's statement that "Many people saw her break down and cry," (although it is not clear if Source #10 was one of them), and that, ". . . she went off on this female harange," before she, ". . . ran out the back, " of the courtroom.

4. Generic criticism's of Judge Schroering's temperment from Sources #9, #7, and #11.

While some of these statements, especially those summarized in #4, above, might fairly be characterized as pure opinion, the intimations that Judge Schroering made faces,

lost her temper, yelled at an attorney and "broke down and cried" and "ran out the back" of her courtroom are clearly statements of facts.

In addition, as the Respondent has never denied, they are all defamatory of a sitting judge. Furthermore, in the present posture of this case, they are all false, as Judge Schroering has denied them under oath (Petition for Certiorari, Pp. 9a-11a). Neither these facts nor any other facts were disclosed to the readers of the Respondent's statements that "Male and female lawyers complain of disturbing displays of emotionalism."

Respondent seeks to equate its defamatory statements to the simple expression of an opinion, such as, "X is not doing a good job;" Petitioner agrees that all of our citizens have "an absolute right" to make these sorts of statements about our public officials (Brief in Opposition, P. 17). Clearly, the statements at issue here are *not* simple expressions of opinion. They are either statements of purported fact or statements that imply the existence of undisclosed facts. Either way, since they are defamatory, they are actionable, *Milkovich* v. *Lorain-Journal,* 110 S.Ct. 2695, 2606-2607 (1990).

Obviously both the undisclosed facts upon which the Respondent based its defamatory statements and any similar facts that the statements might conjure up in the mind of the average reader are easily capable of proof as true or false. All of us have witnessed an individual making faces, yelling, crying, running, even 'breaking down' and "losing his temper."

Unfortunately, the Courts of this nation often seem to simply dislike media defamation lawsuits. Media giants such as Gannet have amassed enormous power in our society; it is easy to dismiss lawsuits against them brought at the behest of mere individuals, and this seems to be the case no matter how much this Court emphasizes

reputational interests and the limits of the protections that it has fashioned for the media over the years. The opinion in this case and no doubt other unpublished opinions sanction the abolition of one complete category of defamation per se, that imputing unfitness in one's occupation, merely because it might require more than passing effort to prove the truth or falsity of the defamatory words in that category. Such a cavalier attitude toward the reputations of our citizens has no place in our Constitutional order.

Respectfully Submitted,

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